

# **Town of Garrett Park**

CASE NO. 20100311-VA01  
Variance Request of James and Jill Joseph  
(Hearing held April 12, 2010)

## **DECISION OF THE TOWN COUNCIL**

### **Summary of Case**

This proceeding involves an application for a variance pursuant to Section 403 of the Garrett Park Town Code of Ordinances (the “Town Code”). James and Jill Joseph (the “Applicants”) propose to renovate and expand an existing main building. The construction would result in lot coverage of nineteen and eight-tenths (19.8) percent. The Town Code prohibits lot coverage for a main building from exceeding eighteen (18) percent. Accordingly, a variance is required. The property is known as Lot 1, Block A, in the “Plavniek’s Addition to Garrett Park” subdivision, also known as 10901 Raleigh Avenue, Garrett Park, Maryland 20896 (the “Subject Property”).

### **Applicable Law**

The variance is sought from the requirements of Section 402(b)(3) of the Town Code, which provides, in pertinent part: “The maximum percentage of the net lot area that may be covered by a main building is eighteen (18) percent.” “Net lot area” is defined by Section 403(c)(1.2.2) as “the total horizontal area included within the rear, side and front lot lines.”

Section 403(c) provides that the Council may grant a variance from the strict application of the building requirements where, “[b]ecause of the unusual dimensions, shape, topography or other exceptional characteristics of the lot, the lot cannot accommodate the building sought to be erected” if the building regulations are strictly applied and such strict and literal application “would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship on, the owner of the property.”

### **Procedural History**

The Applicants submitted an Application for a Variance dated March 11, 2010.

Notice of the hearing was posted on the property, at the Town's public bulletin board, and mailed to all adjoining and confronting property owners on March 11, 2010. The notice indicated that the Town Council would hold a public hearing in the Town Hall on April 12, 2010 at 8:00 p.m. to consider the Applicants' request.

### **Summary of Evidence**

The Applicants submitted the following materials in support of their request: (i) the aforementioned Application for a Variance; (ii) a copy of their Building Permit Application; (iii) a survey depicting existing conditions; (iv) photographs of the Subject Property; (v) site plans denoting existing and proposed conditions; (vi) architectural drawings showing existing and proposed elevations and views; and (vii) floor plans showing existing and proposed conditions. Letters in support of the request were submitted by Art and Judy Heyman of 4418 Cambria Ave, the Applicants' adjoining neighbor to the east, and from Michael Ionno of 10903 Raleigh Avenue, the Applicants' adjoining neighbor to the south. A report and recommendation of the Setback Advisory Committee was submitted for the record.

According to the Setback Advisory Committee's report, the Applicants' proposed construction would exceed the allowable lot coverage for Garrett Park unless a variance is granted. The Committee explains in the report that the Subject Property comprises 8,682 square feet, including a portion of an abandoned right-of-way comprising 475 square feet. According to the Committee, the 475-square foot portion cannot be developed by the Applicants because it is subject to an easement that reserves it for use as a driveway for the neighboring property to the south, and it is so used. The Committee explains that, but for the 475-square foot portion, the Subject Property's net lot area would be less than 8,600 square feet. If the net lot area were less than 8,600 square feet, the lot size would be considered an exceptional characteristic for purposes of a variance request according to Section 403(c)(1.1.3) of the Town Code. The Committee further explains that, in addition to being a small lot, the corner location and triangular shape of the Subject Property restrict the practical expansion of the existing main house.

According to the report, if the variance were granted, the existing and proposed construction would total 1,720 square feet, representing a lot coverage of nineteen and eight-tenths (19.8) percent. A variance from Montgomery County would not be required because

the County limits lot coverage to twenty (20) percent in the Garrett Park Overlay Zone. The Committee recommends approval of the Applicants' variance request.

The Applicants assert in their application that their property is subject to exceptional characteristics because the lot shape is a trapezoid with the yards coming to an acute angle, forcing the buildable area into a shape that does not accommodate conventional construction. Also, the Applicants explain that the lot shape is impacted by the easement area located on the south east side of the Subject Property that narrows the area of the lot. The Applicants assert that the easement and lot shape combine to create a buildable area that is atypical and thus cannot accommodate the construction that they seek. The Applicants contend that, although the lot comprises 8,682 square feet, the combination of these conditions produces a functional net lot area under the threshold of 8,600 square feet.

The Applicants assert that the proposed construction would not exceed a floor area ratio of 0.375 as required by Section 403(c)(1.2.1) of the Town Code. The plans submitted for the record reflect that the proposed construction would result in 2,627 square feet of floor area (a floor area ratio of 0.303).

The Applicants assert that enforcement of the building regulations would result in peculiar or unusual practical difficulties, and/or hardship, because the Applicants have no effective use of the easement area yet it prevents them from qualifying for the presumed exceptional characteristic. Also, if a variance were not granted, the Applicants would be unable to complete their proposed renovation. The Applicants explain that they desire to renovate the existing house in order to create more functional multi-generational living space, including a first-floor living room, bedroom, and bathroom.

Harry Gordon, Chair of the Setbacks Advisory Committee, appeared at the hearing and presented the recommendation of the Committee. The Applicants' architect, Tom Wheeler, appeared at the hearing and testified in support of the request. Mr. Wheeler asserted that the lot has an irregular shape that limits the amount of available usable space. He explained that, as a result of the odd shape of the lot, conventional construction is difficult; rather than constructing square or rectangular rooms, rooms would be angular, with sharp corners and unusable space, as a result of the lot lines. Accordingly, rooms would have to be larger in order to have a comparable amount of functional space. He further asserted that the existing house is small in size. Mr. Joseph added that the Applicants' plans include an in-law suite and

their entire project has been designed for wheel-chair accessibility.

At the hearing, Mary Ruttkay of 4415 Cambria Avenue and Jean Horan of 4419 Cambria Avenue voiced their support for the Applicants' request.

No correspondence or testimony was presented in opposition to the Applicants' request.

### **Findings of Fact**

Based upon the testimony and evidence of record, the Council makes the following findings in connection with this matter:

1. The Subject Property is an oddly-shaped corner lot located at the intersection of Knowles Avenue and Raleigh Avenue;
2. The Subject Property, comprising 8,682 square feet, is relatively small in size compared to other properties in the Town;
3. The property's size is only slightly larger than the lot size that the Town Code presumes to be exceptional (i.e., 8,600 square feet);
4. The small size and odd shape of the lot create a buildable area that is not reasonably functional in the absence of the requested variance because conventional construction is severely restricted. Construction conforming to the acute triangular shape of the buildable area of the lot would include rooms and interior space that are not realistically useable. As a result, certain rooms would need to be larger in order to have an amount of functional space comparable to a square or rectangular room;
5. Requiring the Applicants to conform to the lot coverage requirement would result in peculiar or unusual practical difficulties to the Applicants without any counterbalancing benefit to the public;
6. One of the purposes and intents of the Town Code is to preserve "green" space, avoid crowding of structures, and provide adequate area for light and air between buildings on adjacent lots;
7. Under the circumstances of this case, a lot coverage of nineteen and eight-tenths (19.8) percent would not materially alter the amount of space between buildings, the flow of light and air, or change the character of the neighborhood;
8. Based on the odd shape of the lot, significant open space would remain

on the Knowles Avenue and Raleigh Avenue sides of the structure.

9. Under the circumstances of this case, including the significant area that would remain as open space, the requested variance represents only a modest increase to the permissible lot coverage;

10. The proposed new construction, including existing structures, would not exceed a floor area ratio of 0.375 as required by Section 403(c)(1.2.1) of the Town Code;

11. The Applicants' adjoining neighbors to the east and south, who would be the most directly affected by the variance, as well as other nearby residents, support the request;

12. No objections to the proposed variance were submitted for the record; and

13. The above findings support a conclusion that approval of the variance would be in harmony with the general purposes of the Town building regulations and would not be contrary to the public interest.

### **Conclusions of Law**

Based upon the foregoing findings, the Council concludes the following:

1. Good cause has been shown that the variance should be granted;

2. Because of the unusual dimensions, shape, and other exceptional characteristics of the lot, the lot cannot accommodate the building sought to be erected if the lot coverage requirements of Section 402(b)(3) are strictly applied to the construction;

3. The strict and literal application of Section 402(b)(3) would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship on, the owners of the Subject Property;

4. Approval of the application for relief would be in harmony with the general purposes of the Town building regulations and would not be contrary to the public interest; and

5. The variance requested represents the least departure from the requirements of the building regulations that would give relief to the applicants.

### **Grant of Variance**

Accordingly, the requested variance from the requirements of Section 402(b)(3) of the Town Code, which provides, in pertinent part: “The maximum percentage of the net lot area that may be covered by a main building is eighteen (18) percent,” is GRANTED, provided, however, that:

1. The construction described above shall be constructed and maintained in accordance with the plans and specifications submitted for the record;
2. Any changes, modifications, additions or deletions to the construction shall require the prior written consent of the Town, except for changes, modifications, additions or deletions resulting from the repair or maintenance of the approved construction; specifically, no changes in site location, setback, or lot coverage shall be made until such changes have been approved in writing by the Town.
3. A building permit for the construction authorized by this variance shall be obtained from the Town within twelve (12) months of the date of this Decision or the variance shall be void, unless an extension is granted in writing by the Town Administrator;
4. A copy of this Decision shall be recorded among the Land Records of Montgomery County, Maryland, at the Town’s expense;
5. The terms and conditions of this Decision shall run with the land and be binding upon the Applicants, their successors and assigns;
6. If the Applicants, their successors or assigns, violate any of the terms and conditions of the variance approval and fail to remedy such violation within thirty (30) days of written notification from the Town of such violation, then the Town may revoke the variance;
7. If the Town is required to enforce this Decision, then the Applicants, their successors or assigns, shall reimburse the Town for all costs to enforce this Decision, including, but not limited to, attorneys’ fees.

The foregoing Decision was adopted by the Town Council of the Town of Garrett Park with the following members voting in favor: Beth Irons, Jack Mandel, Chris Petito, Phil Schulp, and Hans Wegner.

**Town of Garrett Park:**

GARRETT PARK TOWN COUNCIL

*Edwin Pratt, Jr.*  
Edwin Pratt, Jr.,  
Clerk/Treasurer

By: *Christopher W. Keller*  
Christopher W. Keller, Mayor

Date: 05/10/2010

STATE OF MARYLAND :  
to wit:  
COUNTY OF MONTGOMERY :

I HEREBY CERTIFY that on this 10<sup>th</sup> day of May, 2010, before the subscriber, a Notary Public of the State and County aforesaid, personally appeared Christopher W. Keller, in his capacity as Mayor of the Town of Garrett Park, and he did acknowledge the foregoing to be an official act of the Town of Garrett Park.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

*Elizabeth S. Henley*, Notary Public

My commission expires: 8/10/2011

After recordation, please return to:

[NOTARY SEAL]

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